IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9979 OF 2004

Dattatraya Tanaji Pandam & anr. ... Petitioners

V/s

Ankush Ramchandra Gaonkar ... Respondent

Mr. R.D. Misra for the petitioners.

Mr. R.R. Salvi for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 18TH APRIL, 2006

P.C.:

1. Heard learned counsel for both parties. Perused the record.

2. the petitioner landlord has preferred this petition against the judgment and order passed by the lower appellate Court dated 24.8.2004 dismissing his appeal and confirming the judgment and order passed by the Trial Court dated 11.12.2002 dismissing the suit for possession of the suit premises but partly decreeing the same for payment of arrears of rent.

3. The petitioner plaintiff is the owner of the suit property and the respondent is the monthly tenant therein paying rent at the rate of Rs.20/- p.m. According to the plaintiff, the defendant was in arrears of payment of rent from 1.9.1977 to 31.1.1996 and hence demand notice was issued dated 1.1.1996. The notice was duly served upon the defendant. However, the defendant failed and neglected to reply the said notice and also did not pay the arrears of rent and hence the suit came to be filed.

The suit was challenged by the defendant on various grounds inter-alia denying the allegations made by the plaintiff submitting that he was not rendered defaulter in law and, therefore, the decree for eviction could not be passed against him.

4. The Trial Court adjudicated the dispute on merits holding that though the plaintiff was in arrears of payment of rent and had not paid as per the demand on receipt of the notice, it was found that he was ready and willing to pay the arrears of rent and, therefore, could not be said to be the defaulter in law within the meaning of Sec. 12 of the Bombay Rent Act and, as such, the suit was dismissed so far as prayer for possession

was made.

5. The appeal was carried to the lower appellate Court, who, after hearing both parties, came to the conclusion that the reasoning adopted and findings recorded by the Trial Court were legal and proper and dismissed the appeal. Hence the present petition.

6. On perusal of the entire record as well as the facts involved in the dispute, it appears that the notice terminating the tenancy came to be issued by the landlord to the respondent tenant only when the declaration under the Slum Act was recalled. The respondent stopped paying the rent to the appellant since the suit premises were declared as slum area. On setting aside that declaration of slum area the defendant started paying the rent to the Government Authority. No doubt that the Trial Court did not accept this version of payment of rent to the Government Authority but hold that the tenant had shown readiness and willingness to pay the rent and deposited the rent with the Court as per directions issued by the Court.

It was submitted on behalf of the appellant that the respondent only deposited the rent and not the interest

on that rent amount. To escape the decree for eviction and possession the respondent ought to have deposited all the arrears of rent together with interest at the rate of 9% p.a. but the interest was never deposited with the Court nor was paid to the petitioner and, therefore, the tenant could not seek protection contemplated under Sec. 12 (3) of the Bombay Rent Act and hence the decree came to be passed of eviction against the tenant.

7. The lower appellate Court, after considering this aspect, came to the conclusion that there could not be any dispute that the interest is to be paid on arrears by way of penalty and penalty has to be imposed only in case of wilful default and negligence. The respondent could not pay rent to the landlord because the suit premises was declared slum area and even though the declaration was taken back in respect of the suit premises, this fact is not mentioned in the notice served by the respondent tenant of the suit premises. It was also observed that there was nothing on record disclosing this fact of withdrawal of notification under the Slums Act was known to the defendant and despite his apprisal of the said fact he wilfully defaulted the payment. Therefore, the lower appellate Court was of

the view that non-payment of rent and interest thereon was justified regarding its period and, therefore, it cannot be said that he was wilful defaulter. On perusal of the record, it is obvious that there was nothing mentioned about the withdrawl of the notification and, therefore, it was not necessary to pay rent within one month from the date of receipt of the notice and that he has not disputed the rent by filing the standard rent application.

8. The learned counsel for the petitioner sought to put reliance on the Apex Court ruling in the case of **Vasant Ganesh Damle v/s Shrikant Trimbak Datar & anr., reported in 2002 (2) All.MR 594 (S.C.),** however, the law laid down by the Apex Court in this ruling is quite different and is not applicable to the present case. The Apex Court was dealing with the matter wherein the application was made by landlord praying for payment of rent and the question before the Apex Court was whether such an application made by the landlord could or could not be treated as an application contemplated under Sec. 12(3) of the Bombay Rent Act. Therefore, this ruling is not at all applicable to the present dispute.

The learned counsel for the respondent sought to put

reliance on the judgment of the Single Bench of this Court in the case of **Jagdish Prasad Gyaniram Agarwal v/s Uttamchand alias Mohanlal Deepchand Chordiya, reported in 2002 (5) Bom.C.R. 535,** wherein it was held thus -

> "Section 12(3) requires a tenant in order to avoid forfeiture to on or before the first date of hearing to pay or tender the amount of rent in Court or tenders in Court the standard rent and the permitted increased together with simple interest on the amount of arrears and permitted increases at the rate of 9% p.a. The second part contemplates that thereafter suchs tenant continues to pay or tender in Court regularly, such standard rent and the permitted increases till the suit is finally decided and also to pay costs as directed by the Court. The limited issue is whether the tenant having paid the standard rent, was he bound to pay the interest on the standard rent.
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> Is a tenant who has applied under Sec. 11 for fixation of standard rent absolved from payment of interest as contemplated by section 12 (3) ? To my mind, the answer is no. What section 12(3) contemplates is payment of standard rent and interest thereon at 9% p.a. Two situations can arise. The first would be when the standard rent application was already filed even before the notice under section 12 (2). We are not concerned with the first situation. The second situation is when the tenant applies for determination of standard rent, after the statutory notice. There is contractual rent which the tenant does not accept as the standard rent. Therefore, he applies under Section 11 for fixation of standard rent. n other words, till such time as the standard rent is fixed and the order is passed by the Court, for payment of interim rent, the contractual rent continues to be in the hands of the tenant. The fixation of standard rent would only mean rent which is due and payable. All the time, the amount is lying with the tenant. There interest payable will be computed on standard rent and not on contractual rent. Therefore, at the most, if the rent is in

> the hands of the tenant, the interest payable by him would be payable on standard rent as determined."

Therefore, it would not apply this ratio. It is apparent that non-payment of interest by the respondent would not be fatal to his case in view of the facts and situation involved in this dispute and, as such, I have no hesitation to hold that both the Courts below have rightly refused to pass the decree for eviction. Under the circumstances, I do not see any reason to disturb the concurrent findings recorded by both the Courts below.

9. In the result, the petition stands dismissed with no order as to costs.

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